

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of) **MAIL STOP AF**
William R. Sweeney) Group Art Unit: 3628
Application No.: 10/729,968) Examiner: Akiba K. Robinson Boyce
Filed: December 9, 2003) Confirmation No.: 2214
For: MODEL-BASED PROMOTION AND)
PRICE COMPUTATION SYSTEM)
AND METHOD)

Pre-Appeal Brief Request for Review

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. This request is void of amendments and is filed concurrently with a Notice of Appeal.

In numbered paragraph 3 on page 2 of the Office Action, claims 1-10, 16, 19-20, 31-33, 42-45 stand rejected under 35 U.S.C. § 103(a) for alleged unpatentability over *Schroeder et al.* (US 2003/0130883) and in view of *Failing, Jr. et al.* (US 5,448,226) and further in view of *Werner* (US 2002/0069107). Applicants respectfully traverse this rejection.

Contrary to the Examiner's assertion, the combination of *Schroeder*, *Failing, Jr.*, and *Werner* does not disclose every feature recited in the claims.

Each of independent claims 1 and 31 recite, among other features, calculating in the controller a retail price based on information provided by the promotion and price computation model.

Based on the guidance provided in Applicant's disclosure, one of ordinary skill would understand that the retail price is the monetary value at which goods are presented to and/or sold to consumers.

The Examiner alleges that *Schroeder* discloses the calculation of retail price since the retail price is included in the information of a proposed promotion. See Advisory Action, November 3, 2010. However, there is nothing in *Schroeder* that suggest anything more than the success of a sales promotion is projected.

In contrast, *Schroeder* discloses a method and system that predicts the profit attributable to a proposed sales promotion of a product. The proposed promotions are entered into a computer program that runs a sales lift model based on a prediction of increased sales to determine a set of promotion conditions. The system uses historical databases of sales for a variety of promotion conditions and predicts how planned promotions will affect sales in a particular store. *Schroeder* does not disclose that a retail price is calculated based on the promotion information and a price computation model. Even assuming *arguendo* that the Examiner's interpretation of *Schroeder* concerning retail price in the proposed promotion is accurate, there is still no disclosure or suggestion that this retail price is calculated based on a promotion and a price computation model as alleged.

Furthermore, in paragraph 79, *Schroeder* defines costs as the "funds required for a promotion or plan", and the planned promotion can be approved or modified based on the calculated cost. *Schroeder* adds that "actual costs" are those costs that accumulate during execution of the promotion or plan, such as through paying bills or through off-invoice allowances (emphasis added). The "actual costs" are used for plan evaluation to improve the return on investment for successive

promotions. *Schroeder* discusses the prediction of costs incurred by the retailer in executing the promotion. These predicted costs, however, are still not analogous to Applicant's claimed "retail price".

From the above, one of skill in the art would understand that *Schroeder* does not disclose or suggest the calculation of retail price based on information provided by the promotion and price computation model, as is recited in Applicant's claims.

Failing, Jr. is alleged to remedy the deficiencies of *Schroeder* concerning, "auditing of improperly implemented promotions" as recited in independent claims 1 and 31. *Failing, Jr.* discloses a system having a central store computer and multiple ESL-mounted shelf talkers, which are signs, cards, or other printed material placed at the shelf location. The system includes sensors to detect the presence of shelf talkers. An audit is performed to determine which products are on promotion, the start and end dates of the promotion, and the status of whether or not shelf talkers are installed. Nothing in *Failing, Jr.*, suggests or is related to the calculation of a retail price. Thus, even if the combining of *Failing Jr.* and *Schroeder* is reasonable, this combination does not disclose calculating retail price as recited in the claims. More importantly, even if *Failing Jr.* can reasonably be interpreted to include a retail price calculation as alleged, which Applicants do not believe that it does, there is nothing in either of these references that suggests the calculation of this retail price based on information provided by the promotion and price computation model, as recited in Applicant's claims.

The Examiner acknowledges that the combination of *Schroeder* and *Failing, Jr.* fails to disclose or suggest the use of a schedule that is encrypted and decrypting

the schedule on a segment-by-segment basis. *Werner* is relied upon in an effort to remedy this deficiency.

While not acquiescing to the asserted teachings of *Werner*, Applicant respectfully submits that this reference does not disclose or suggest the calculation of retail price, and therefore fails to remedy the deficiencies of *Schroeder* and *Failing, Jr.* as it concerns independent claims 1 and 31.

In summary, *Schroeder*, *Failing, Jr.*, and *Werner* when applied individually or collectively fail to disclose or suggest every feature and/or the combination of features recited in Applicant's claims. Thus, a *prima facie* case of obviousness has not been established. Based on the foregoing discussion and the established deficiencies in the applied art, withdrawal of this rejection is respectfully requested.

In numbered paragraph 6 on page 9 of the Office Action, claims 21-25, 27, and 30 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Teicher et al* (U.S. Patent No. 5,933,813) in view of *Failing, Jr.* and further in view of *Werner*. Applicant respectfully traverses this rejection.

Independent claim 21 recites, among other features, a sales controller in communication with a retailer computing device and a manufacturer computing device, wherein the sales controller is configured to receive promotion information from the manufacturer computing device and price determination parameters from the retailer computing device to calculate a retail price and implement a promotion.

In contrast, *Teicher* discloses a sales promotion data processor system in which a merchant 100 communicates with a store computer system 101 through a merchant interface 102. The merchant interface 102 provides the store computer system with 101 with cost information regarding the various products offered for sale

by the store. The merchant interface also provides basic price information regarding the normal price for the merchandise items. The computer system 101 includes storage devices that store predetermined criteria used to determine sales promotion prices of the products offered for sale. See *Teicher*, col. 3, ll. 57-67. The computer system 101 is connected to communicate with point of sale sensor units, which sense each product presented at the respective point of sale unit and generate purchase data identifying the sold products. *Id.*, col. 4, ll. 17-20.

The system recited in claim 21 provides that a sales controller can determine a price for an item based on information input from both a manufacturer and a retailer (i.e., merchant). In contrast, *Teicher* describes a process in which a merchant can remotely control and monitor the sales price and promotion of goods sold at individual stores of the merchant. *Teicher* neither discusses nor appears to contemplate a feature in which the sales price of a good is calculated based on information concerning that and, which is provided by a manufacturer. Thus, Applicants respectfully submit that *Teicher* in combination with *Failing, Jr.*, and *Werner* does not disclose or suggest the features of claim 21 as alleged

Withdrawal of the final Office Action is hereby deemed to be in order.

Respectfully submitted,

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